IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6061 of 2000
With
SPECIAL CIVIL APPLICATION No 8794 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC VAHAN VYAVAHAR BHAVAN

Versus

CHANDRIKABEN ASHOKBHAI BHUVIR LEGAL HEIRS AS BHUVIR

Appearance:
MR HARDIK C RAWAL for Petitioner
MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 11/08/2000

COMMON ORAL JUDGEMENT

1. Heard learned counsel Mr. H.C. Rawal appearing on behalf of the petitioner in Spl.C.A. No. 6061 of 2000 and Mr. J.S. Brahmbhatt learned counsel appearing

on behalf of the petitioner in Spl.C.A. No. 8794 of 2000. Rule in Spl.C.A. No. 8794 of 2000. Mr. H.C. Rawal waives service of rule on behalf of respondent.

2. These two writ petitions have been filed against the same judgment and award of the Labour Court, Bharuch passed in Reference (LCB) 141 of 1992 on 21-12-1999. The Corporation having felt aggrieved by the judgment & award filed Spl.C.A. No. 6061 of 2000, whereas the workman having felt aggrieved by the judgment & award filed Spl.C.A. No. 8794 of 2000. As agreed by learned counsel for the parties, both these petitions are taken up for hearing and are disposed of by this common judgment.

3. The respondent-workman in Spl.C.A. No. 6061 of 2000 was working in the post of Helper with the GSRTC. While in service he applied for House Building Loan and while applying for loan, the workman indicated the house he intent to purchase by the loan amount. Accordingly an agreement was made between the seller and the workman for purchase of the house. But the workman could not purchase the particular house as the balance loan amount was sanctioned after a period of six months. Subsequently, after getting the entire loan amount the petitioner purchased separate two plots which have not been mentioned in the loan application by the workman. Further, after purchasing the new plots of land the workman did not inform the authority about the new plots purchased by him. Further, as per terms of the loan the workman did not mortgage the plots he purchased in favour of the Corporation. It is further allegation that, out of these two plots purchased by the workman, he had sold one plot without intimating the authority. Considering above misconducts of the workman the Corporation started disciplinary proceedings against him and Inquiry Officer was appointed. During inquiry all the charges framed against the workman was proved. The disciplinary authority after considering inquiry report appearing against the workman, dismissed him vide order dated 30-6-1990. Thereafter, workman filed departmental appeal which was also dismissed. The petitioner therefore took up the matter with the authority by referring the matter to the Labour Court. Accordingly the dispute was referred to the Labour Court, Bharuch which has registered the case as Reference (LCB) No. 141/1992. The Labour Court after taking evidence and after hearing the parties by judgment & award dated 21-12-1999 set aside the order of dismissal,but since the workman died during pendency of the reference, order for reinstatement was not passed. However the Corporation was directed to

give all the retiral benefits to the workman. In addition, the Labour Court has also directed payment of 40 % of the back wages for the period from 30-6-1990 to 11-10-1996, that is from the date of dismissal from service till the date of death of the workman. Having felt aggrieved by the judgment & award passed on 21-12-1999 by the Labour Court, Bharuch in Reference (LCB) 141 of 1992, the Corporation has filed Spl.C.A. No. 6061 of 2000 for quashing the judgment & award of the Labour Court. The wife of deceased workman also having felt dissatisfied with the judgment & award of the Labour Court filed Spl.C.A. No. 8794 of 2000.

4. Mr. Rawal, learned counsel appearing on behalf of the Corporation submitted that the Labour Court should not have interfered with the order of penalty of dismissal imposed by the Corporation. Learned counsel further submitted that the Labour Court did not find any irregularity or error in the disciplinary proceeding. However, the Labour Court has taken very liberal views as the workman died during pendency of the proceeding, and also considering the fact that the surety of the workman has paid loan amount to the Corporation. Mr. Rawal submitted that, when the misconduct of the workman has been proved, the Labour Court should not have taken such a liberal view only because of the fact that the workman had died. Mr. Rawal further submitted that, there is no illegality in the disciplinary proceeding and if such lapses and misconducts are not viewed seriously, then, it would be difficult for the Corporation to manage huge employees working in the Corporation. Mr. Rawal accordingly submitted that the Labour Court has exercised the jurisdiction not vested in it under law by interfering with the order of penalty passed by the disciplinary authority. Therefore, it is liable to be quashed.

5. Mr. Brahmbhatt, learned counsel appearing for workman submitted that the workman applied for house building advance and part of house building advance was granted to him. After getting part of the house building loan the workman entered in to an agreement with seller of plot of land, and it was stipulated in the agreement that the workman will purchase the plot of land after paying full consideration money within a period of six months from the date of agreement. It is further submitted by Mr. Brahmbhatt that the remaining loan amount was not sanctioned within six months, but after about two years and therefore the workman could not purchase the plot of land as intimated in the loan agreement. Mr. Brahmbhatt further submitted that the

workman has really purchased another two plots of land, but it is a fact that the workman did not mortgage these two plots of land to the authority. It is also admitted that out of these two plots, the workman has sold out one plot without intimating or obtaining permission from the authority. Mr. Brahmbhatt further submitted that the loan amount was admittedly refunded to the Corporation and therefore the Corporation should not have inflicted any penalty on the respondent.

6. I do not agree with the submissions of learned counsel Mr. Brahmbhatt in view of the fact that the workman has refunded the loan amount. There is definitely lapses on the part of the workman for which he cannot be let off. Having regard to the facts of the case I do not think that the Labour Court has committed any error in taking lenient view, in view of the fact that the loan amount was refunded by the surety of the workman and the workman died leaving behind his wife and small children during pendency of the reference. I am of the view that, since the loan amount has been refunded, even though there are lapses on the part of the workman, he deserves lenient punishment. The Labour Court has passed an order for payment of 40 % back wages, and I do not find any ground to interfere with the aforesaid finding of the Labour Court, in view of the fact that the workman has admitted in his evidence before the Labour Court that after dismissal he has earned some money by doing labour work. The Labour Court has also passed order for granting retiral benefits to the heirs of the deceased workman.

7. Spl.C.A. No. 8794 of 2000 has filed by Chandrikaben Ashokbhai Bhuvir, wife of the deceased workman. The retiral benefits of the deceased workman will go to the legal heirs of the deceased. While implementing order of the Labour Court it is made clear that for the purpose of calculating retiral benefits of the deceased workman, the Corporation shall count the entire service of the petitioner-workman from the date of entry till the date of his death. I therefore, do not find it necessary to interfere with the directions of the Labour Court. Both the writ petitions are accordingly disposed of. Petitions are accordingly allowed in part. Rule made absolute to the aforesaid extent in both the petitions. I make no order as to costs.

Dt: 11-8-2000 (P.K. Sarkar, J)

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